

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Implementation of the Commercial Spectrum  
Enhancement Act and Modernization of the  
Commission's Competitive Bidding Rules and  
Procedures

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WT Docket No. 05-211

**Reply Comments of Ericsson Inc**

Ericsson Inc ("Ericsson"), through its undersigned attorneys, hereby submits these Reply Comments in response to the *Further Notice of Proposed Rulemaking*<sup>1</sup> issued on February 3, 2006 by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding. The *Further Notice* responds to a proposal by Council Tree Communications ("Council Tree") that the FCC "prohibit the award of bidding credits or other small business benefits to [otherwise qualified designated] entities that have . . . a 'material relationship' with a 'large in-region incumbent wireless service provider.'"<sup>2</sup> In its *Further Notice*, the Commission asks whether it should also restrict the availability of designated entity ("DE") benefits where an "otherwise qualified designated entity has a 'material relationship' with a large entity that has a significant interest in the provision of communication services."<sup>3</sup>

First and foremost, Ericsson urges the Commission to reach its decision in this proceeding expeditiously so as not to delay the upcoming Advanced Wireless Services ("AWS")

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<sup>1</sup> See *Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211 (Feb. 3, 2006) ("*Further Notice*").

<sup>2</sup> *Id.* at ¶ 1. Council Tree defined a "material relationship" as one in which a large in-region incumbent wireless service provider has provided a material portion of the total capitalization of the applicant, or has any material operational arrangement with the applicant or other material financial arrangement relating to the overlap of markets. See *id.* at ¶ 13.

<sup>3</sup> *Id.* at ¶ 1. According to the *Further Notice*, entities with a significant interest in the provision of communication services would include voice or data providers, content providers, equipment manufacturers, other media interests, and/or facilities or non-facilities-based communications services providers (hereinafter collectively referred to as "entity(ies) with significant interests in communications services"). See *id.* at ¶ 19.

auction. Second, Ericsson requests that the Commission not adopt additional restrictions on DEs that could constrain their access to manufacturer financing for network construction.

**I. It is Imperative that the Commission Ensure that the June 2006 AWS Auction (Auction 66) Proceeds as Scheduled.**

The June AWS auction is a vital opportunity for carriers to obtain spectrum to deploy wireless broadband services. As T-Mobile, Council Tree, CTIA, and the majority of commenters in this proceeding have suggested, the Commission should expeditiously decide these issues.<sup>4</sup> To delay the auction would inject a level of uncertainty that would vastly undermine the upcoming auction and would negatively impact the very same small entities that the Commission seeks to protect in this proceeding.<sup>5</sup> Therefore, Ericsson urges the Commission to reach a decision promptly, so as not to delay, under any circumstances, the upcoming AWS auction.

**II. The Commission Should Not Restrict the Ability of Designated Entities to Access Manufacturer Financing for Network Construction.**

The *Further Notice* contemplates restrictions far beyond those originally suggested by Council Tree. The majority of commenters explain that the FCC's expansive proposal would

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<sup>4</sup> See, e.g., Comments of T-Mobile USA, Inc., *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedure*, WT Docket No. 05-211 (Feb. 24, 2006) ("T-Mobile Comments") at 1, 3, 5; Comments of Council Tree Communications, Inc., *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedure*, WT Docket No. 05-211 (Feb. 24, 2006) ("Council Tree Comments") at 62; Comments of CTIA – The Wireless Association, *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedure*, WT Docket No. 05-211 (Feb. 24, 2006) ("CTIA Comments") at i; Comments of Doyon Communications, Bristol Bay Native Corporation, Chugach Alaska Corporation, Koniag Development Corporation, Bethel Native Corporation, the Kuskokwim Corporation, and St. George Tanaq; Comments of United States Cellular Corporation, *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedure*, WT Docket No. 05-211 (Feb. 24, 2006) ("Doyon Comments") at i-ii.

<sup>5</sup> See, e.g., CTIA Comments at i.

prevent small businesses from benefiting from relationships with other entities that provide important sources of capital and expertise.<sup>6</sup>

Based on Ericsson's experience, equipment manufacturers can play a significant role in assisting DEs in their provision of communications services. The wireless telecommunications industry requires significant capital expenditures and technical expertise, and manufacturer financing can promote participation by small businesses in spectrum-based services. In some instances, equipment manufacturers can provide financing when a DE is confronted with difficulties in its attempts to obtain project financing or cost-efficient loans after it has obtained a spectrum license. For example, when considering loans to DEs, lenders often take into consideration the fact that DEs tend to lack industry and technical expertise.<sup>7</sup> This frequently results in DEs obtaining loans with much higher interest rates or overly restrictive financing terms, or in the outright rejection of their loan applications. By obtaining financing from a manufacturer, a DE can generally obtain better financing terms to construct its network. Moreover, manufacturer financing relationships tend to be accompanied by access to technical and industry expertise to which small entities would otherwise have no access.

For example, Ericsson provided manufacturer financing for a major portion of a \$40 million native American Tribe state-of-the-art GSM wireless venture. Based on its experiences, Ericsson has observed that manufacturer financing can act as a crucial economic catalyst. It allows manufacturers to assume some of the financial risk involved in revolutionary ventures – risk that traditional financiers are unwilling to fund and local entrepreneurs cannot afford to fund. Manufacturer financing can help to ensure the development and rapid deployment of new

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<sup>6</sup> Council Tree opposes the FCC's expansion of its original proposal. *See* Council Tree Comments at 36.

<sup>7</sup> *See id.* at 39.

technologies, products, and services for public benefit.<sup>8</sup> Such arrangements can promote economic opportunity and competition while ensuring that new and innovative technologies are readily accessible to consumers.<sup>9</sup>

Restricting DEs from obtaining manufacturer financing to construct their networks is completely unnecessary to further the goals of the FCC's DE program. In fact, if the Commission adopted rules that hindered small entities' entry into the highly competitive wireless market, it would undermine the goals of this very program. The FCC's proposal would, in many instances, impede market entry of small new entrants.<sup>10</sup> As T-Mobile notes, "from the inception of the DE program, the Commission has recognized that small businesses lack the ability to bid for and win spectrum, much less construct wireless networks, absent significant financial and operational support from established companies."<sup>11</sup> When it developed the band plan for the AWS spectrum scheduled for auction in June, the FCC recognized the needs of smaller entities by establishing spectrum allocations specifically to "enable a wide variety of carriers – including not only incumbent PCS and cellular providers but also new entrants and smaller, rural wireless providers – to acquire smaller spectrum blocks to deploy advanced services effectively, increase their footprint, and improve service quality."<sup>12</sup>

It is now more critical than ever for the Commission to maintain auction procedures that ensure that smaller wireless carriers are provided with realistic opportunities to acquire new spectrum. By permitting manufacturer financing and recognizing that entry into the wireless telecommunications industry requires significant capital expenditures and technical and industry

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<sup>8</sup> See *id.* at 10.

<sup>9</sup> See *id.*

<sup>10</sup> See, e.g., Doyon Comments.

<sup>11</sup> T-Mobile Comments at 9.

<sup>12</sup> *Order on Reconsideration, In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 20 FCC Rcd. 14,058 at ¶¶ 14, 17 (2005).

expertise, the FCC can encourage small businesses to participate in competitive, spectrum-based services.

### **III. Conclusion.**

For the foregoing reasons, Ericsson asks that the Commission continue to allow DEs to benefit from the capital and industry experience provided through manufacturer financing. Most importantly, Ericsson urges the Commission to reach its decision in this proceeding expeditiously so as not to delay the June 2006 auction of AWS spectrum (Auction 66).

Respectfully submitted this 3rd day of March, 2006.

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